Argued 1-479 Judgment
Decree 4-

4. N. 14. 397

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

Code of 1873
No. ~~335~~ 108
Georgia 618 hold

SARAH E. LOYD AND MINERVA E. LOYD, APPELLANTS,

vs.

MONTROVILLE C. FULTON, AS TRUSTEE FOR VIRGINIA F. FULTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

FILED NOVEMBER 12, 1873.

Mees v Davis 25 Georgia 1
Confederate
code
3461

SUPREME COURT OF THE UNITED STATES.

No. 335.

SARAH E. LOYD AND MINERVA E. LOYD, APPELLANTS,

vs.

MONTROVILLE C. FULTON, AS TRUSTEE FOR VIRGINIA F. FULTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

INDEX.

	Original.	Print.
Bill	1	1
Defendant's plea	17	5
Exhibit B	27	9
Amended bill	45	14
Answer	49	16
Replication	57	18
Deposition of J. S. Hamilton	64	20
Deposition of M. C. Fulton	77	24
Decree	90	28
Appeal	91	28
Bond	93	28
Clerk's certificate	95	29

1 In the district court of the United States for the northern district of Georgia.

To Honorable John Erskine, judge of said court:

Montroville C. Fulton, as trustee for Virginia F. Fulton, a citizen of Georgia, brings this his bill against Sarah E. Loyd and Minerva E. Loyd, citizens of the State of Virginia. And, thereupon, your orator complains and says that, at the March term, A. D. 1868, of this honorable court, respondents brought their action of assumpsit against your orator, in his individual character; and at the March term, A. D. 1871, of said court, obtained a verdict and judgment in said action for the sum of ten thousand dollars principal and six thousand four hundred and forty-seven & $\frac{61}{100}$ dollars as interest to the date of judgment.

On the 26th day of October, A. D. 1871, an execution, issued upon said judgment, was levied by William H. Smyth, United States marshal, upon a tract of land containing seventeen hundred and eighty-one acres, more or less, situated in Columbia County, State of Georgia, known as "Snow Hill;" also, upon a tract of land containing
2 thirteen hundred and seventy-one acres more or less, in Greene County, State of Georgia; also, upon a tract of land situated in Clarke County, in said State, containing three thousand acres more or less, known as "Artondale;" also upon two lots, numbers 38 and 39, "Thomas' survey," in the town of Athens, County of Clarke, in said State, containing three acres each, more or less; and all of said property is advertised to be sold under said levy, as the property of your orator in his individual character, on the first Tuesday in December proximo.

A copy of all the proceedings in respondents' said action, together with a copy of the execution, and the entry of the levies aforesaid, giving a full description of the property levied upon, is hereto attached, marked "Exhibit A," to which leave of reference is prayed.

Your orator further says that he holds all of said property, levied upon as aforesaid under a deed, a copy of which is hereto attached, as trustee for said Virginia F. Fulton, and does not hold or own any part of said property in his own right, and has not since said
3 deed was executed. Said copy deed is marked "Exhibit B," and leave of reference thereto is prayed.

Your orator avers that said deed was made on the day it bears date, and that it was made bona-fide and without any intent to defraud respondents or any other creditor of orators. And your orator submits that a careful consideration of the reasons and motives which prompted the making of said deed, and the pecuniary circumstances of your orator at the time it was made, cannot fail to lead to the conclusion that your orator's foregoing averment is true.

The said Virginia F. Fulton and your orator were married in the year (A. D.) 1851. Previous to their marriage the father of the said Virginia F. and your orator conversed freely upon the subject of the property which her father might give her after her marriage, or which she might inherit at his death.

And it was distinctly understood and agreed that all such property should be the sole and exclusive property of the said Virginia
4 F., free from the debts of any husband she might have. No written agreement was made at the time, because said property had not yet been given to said Virginia F., and it was not then known when it would be given her.

One or two years after the marriage of your orator and the said Virginia F., her father, Thomas N. Hamilton, gave to your orator a small

farm in Newton County, Georgia, which, to your orator's best recollection, had cost and was worth about thirty-two hundred dollars. About the same time the said Hamilton gave to the said Virginia F. about thirty-five slaves, all of whom were by deed given to the sole and separate use of the said Virginia F. From the time of the gifts aforesaid, the said Hamilton gave nothing more of any considerable value to either your orator or the said Virginia F. until his death, which occur'ed in the year (A. D.) 1859. Said Hamilton was a man of great wealth, his estate being valued at one million of dollars; and it was confidently believed by your orator, and by the family of said Hamilton, that said Hamil-
5 ton would leave a will settling all the property which the said Virginia F. should inherit from him upon her, for her sole and separate use, but after the death of said Hamilton no will could be found, and an administrator was appointed upon his estate upon the ground that he had died intestate. Your orator then promised the administrator of said Hamilton that all the property coming to the said Virginia F. should be conveyed in trust for the sole and separate use of the said Virginia F. and her children. The making of the deed of trust was delayed until the time it bears date by mere negligence and without any special reason which your orator can recollect. Finally the deed was made on the day of its date, and the motives which your orator had in making it were those already stated, and the desire which your orator felt that if his own property should be confiscated on account of your orator's participation in the rebellion, his wife's property might not go in the same way. Your orator positively avers that he did not convey any property in trust, as aforesaid, except that which had been
6 received from his father-in-law's estate, and which he had been under promise so to convey for several years *levy* before the debt on which respondents' judgment was obtained had been created.

Your orator further says that in the month of May, A. D. 1861, he purchased of John J. Thrasher what was known as the "Washington Hall" property in the city of Atlanta, at the price of thirty-five thousand dollars. Said Thrasher was at that time indebted to James Loyd for the same property, and your orator paid twenty-five thousand dollars of the purchase-money, (soon after the purchase,) leaving two notes for five thousand dollars each still outstanding in the hands of James Loyd. These notes had been given to James Loyd in settlement of said Thrasher's indebtedness to him, for said Thrasher's convenience. Afterwards, in the year 1862, according to orator's recollection, your orator sold said Washington Hall property to William Markham, and said Markham was fully informed at the time he made the purchase that these two notes for the purchase-
7 money were still unpaid. Said property is still owned by said Markham, as your orator is informed and believes. Your orator is advised and submits to your honor whether it is not true that a vendor's lien upon said property existed, and still exists, in favor of said Loyd and his heirs at law, who are the respondents in this bill. The judgment of said respondents against your orator was obtained upon said notes, and your orator is informed and believes that said respondents now have pending in this honorable court a bill to enforce said vendor's lien. Besides the vendor's lien which existed for the security of said notes, your orator had amplemeans of his own left after the trust deed already referred to, to pay off and discharge said notes, and your orator fully expected to pay said notes without abatement of any part thereof. Your orator had already made one effort to pay off said notes, and had tendered the amount of the same in confederate curren-

cy, when it was but little depreciated, but it was refused. After
8 the sale of the Washington Hall property by your orator, he had considerable money and owed no debts of any consequence from that time until after the close of the war.

The greater part of the money realized from the sale of the "Washington Hall" property your orator invested judiciously in real estate, in cotton, tobacco, and other property in orator's own name; and before the said trust deed was made, and at the time it was made, and after it was made, your orator believed, and still believes, that he was amply able to pay said notes to the last dollar. And your orator further says that since the close of the rebellion, though your orator lost considerably thereby, he would still have been able to pay off said notes, but for unexpected losses in planting in Arkansas and in other ways.

Your orator therefore repeats the averment already made that said trust deed was executed in the utmost good faith, and that it was not intended thereby to defraud respondents or any other creditor of orator's.

And your orator submits that said trust deed is good in equity
9 and ought to be held by this honorable court.

Your orator further says, that he is advised that if the marshal shall be allowed to proceed and sell the property upon which he has levied, he will be required, under the rules of court, to dispossess your orator and place the purchaser in possession; and inasmuch as the crop on the plantations levied upon is now being gathered and saved; and, inasmuch, also, as the crops are short and will pay little if anything more than the cost of production, the trust estate which your orator represents would be ruined by the sale of the property and the dispossession of your orator.

Your orator is informed and believes, and so charges, that respondents would not be able to pay the damages which they are about to inflict upon your orator as trustee as aforesaid.

The premises considered, your orator prays that a day may be named upon which your honor will hear your orator's application for an
10 injunction, restraining respondents from proceeding upon their said execution against the property conveyed by the deed of trust aforesaid, and that a temporary restraining order of like character may be granted until the hearing upon the application for an injunction. Also, that respondents may answer all and singular the premises, and that upon the final hearing respondents may be perpetually enjoined from enforcing their said execution against the property levied upon, or upon any other property embraced in the aforesaid deed of trust, and that your orator may have such other and further relief as the nature of his case requires.

Your orator also prays for subpœna against the said Sarah E. Loyd and Minerva E. Loyd.

JOHN D. POPE,
Sol'r for Compl'ts.

11 EXHIBIT A.

UNITED STATES OF AMERICA,
Northern District of Georgia:

To the honorable the judge of the district court of the United States for the northern district of Georgia:

The petition of Sarah Emma Loyd and Minerva Ella Loyd, who are citizens of the State of Virginia, sheweth: That Montroville C. Fulton, who is a citizen of and residing in the State of Georgia, and in the northern district thereof, is indebted to your petitioners in the sum of

ten thousand dollars, besides interest. For that whereas, heretofore, to wit, at Atlanta, in the northern district of Georgia aforesaid, the said defendant, on the 16th day of May, in the year eighteen hundred and sixty-one, made his certain instrument in writing called a promissory note, his own proper hand being thereto subscribed by the name and style of M. C. Fulton, which is now here to the court shown, whereby the said defendant promised to pay, by the first day of September, eighteen hundred and sixty-one, to James Loyd, or bearer, five thousand dollars for the
12 Washington Hall property, including the livery-stable, in the city of Atlanta, Geo., and then and there delivered the said promissory note to the said James Loyd, and the said James Loyd, to whom or to the bearer of said promissory note the payment of the said sum of money was to be made, after the making of said note and before the payment of the sum of money therein specified, to wit, on the day and year aforesaid, at Atlanta aforesaid, delivered the said promissory note to the said plaintiffs, who thereby then and there became, and were and still are, the lawful bearers thereof, and entitled to receive and demand payment of the sum of money therein specified. By means whereof the said defendant became liable to pay, and undertook and promised to pay, your petitioner the sum of money in said promissory note specified, according to the tenor and effect thereof. Yet the said defendant, M. C. Fulton, has not paid the sum of money in said note specified, although often requested so to do, but has hitherto wholly neglected and
13 refused, and still does neglect and refuse, to pay the same.

And for that whereas, heretofore, to wit, at Atlanta, in the northern district of Georgia, aforesaid, the said defendant, on the 16th day of May, in the year eighteen hundred and sixty-one, made his certain other instrument in writing called a promissory note, his own proper hand thereto being subscribed by the name and style of M. C. Fulton, which is now here to the court shown, whereby the said defendant promised, by the first day of September, eighteen hundred and sixty-two, to pay to James Loyd, or bearer, five thousand dollars for the Washington Hall property, including the livery-stable, in the city of Atlanta, Geo., and then and there delivered the said promissory note to James Loyd, to whom, or to the bearer of said promissory note, the payment of the sum of money was to be made, after the making of said note, and before the payment of the sum of money therein specified, to wit, on the day and year aforesaid, at Atlanta aforesaid, delivered the said promissory note to the plaintiffs, who thereby then and there became and were and still are the lawful owners thereof, and enti-
14 tled to demand and receive payment of the sum of money therein specified. By means whereof the said defendant became liable to pay, and undertook and promised to pay, your petitioners the sum of money in the said promissory note specified, according to the tenor and effect thereof. Yet the said defendant, M. C. Fulton, has not paid the sum of money in the said promissory note specified, although often requested so to do, but has hitherto wholly neglected and refused, and still does neglect and refuse, to pay the same. By means whereof and by the non-payment of the promissory notes above specified, your petitioners have sustained damages in the sum of twenty thousand dollars.

Wherefore, your petitioners pray that process may issue requiring the said M. C. Fulton, in person or by attorney, to be and appear at the next term of said court at Atlanta, in Fulton, in said district, to be held on the second Monday in March next, then and there to answer your petitioners in an action of assumpsit, &c.

HAMMOND & MYNATT,
Attorneys for Plaintiffs.

15 UNITED STATES OF AMERICA,
Northern District of Georgia:

In the district court of the United States for the northern district of Georgia.

SARAH E. LOYD & MINERVA E. LOYD
vs.
M. C. FULTON. } Assumpsit.

The President of the United States to the marshal of the district of Georgia, greeting:

The defendant, Montroville C. Fulton, is hereby required, personally or by attorney, to be and appear at the next term of said court, to be held at Atlanta on the second Monday in March next, then and there to answer the plaintiffs in an action of assumpsit, as in default thereof the said court will proceed as to justice shall appertain.

Witness the honorable John Erskine, judge of said district court, this 15th day of Feb'y, in the year of our Lord one thousand eight hundred and sixty-eight.

[L. S. OF THE COURT.] HAMMOND & MYNATT,
Plaintiffs' Attorneys.

W. B. SMITH, *Clerk.* [L. S.]

16 (Copy notes.)

(1st.) $5,000.00.

By the first day of September, 1861, I promise to pay James Loyd, or bearer, five thousand dollars for the Washington Hall property, including the livery-stable, in the city of Atlanta, Georgia.

May 16th, 1861.

M. C. FULTON.

(2d.) $5,000.00.

By the first day of September, 1862, I promise to pay James Loyd, or bearer, five thousand dollars for the Washington Hall property, including the livery-stable in the city of Atlanta, Georgia.

May 16th, 1861.

M. C. FULTON.

Filed in office 15th Feb'y, 1868.

W. B. SMITH, *Clerk.*

I acknowledge due and legal service of the within petition or declaration and process, and waive copy thereof, this 17th day of Feb'y, 1868. I waive no plea nor right of defense.

POPE & BROWN,
Def't's Attys.

17 In the United States district court, March term, 1868.

SARAH E. LOYD AND M. E. LOYD
vs.
M. C. FULTON. } Assumpsit.

Defendant comes, by Brown & Pope, his attorneys, and says that he did not undertake and promise in manner and form as plaintiffs have above thereof complained against him, and of this he puts himself upon the country.

And, for further plea in this behalf, defendant says that since the making of the said notes in plaintiffs' declaration mentioned, to wit, on the first day of January, A. D. 1868, at Atlanta, in said district, defendant paid said plaintiffs divers large sums of money, amounting, to wit, to all the sums claimed by said plaintiffs in their said declaration, which sums plaintiffs then and there accepted in full of all their said demands against defendant, and this the defendant is ready to verify.

And for further plea in this behalf, defendant says that, as to the said supposed causes of action in the first count of plaintiffs' declaration
18 mentioned, did not, nor did either of them, accrue to plaintiffs at any time within six years next before the commencement of this suit; and this the defendant is ready to verify.

BROWN & POPE,
Def't's Attys.

Filed in office March 11th, 1868.

W. B. SMITH, *Clerk.*

In the dist. court of the United States for the northern district of Georgia, March term, 1868.

SARAH EMMA LOYD AND MINERVA ELLA LOYD *vs.* M. C. FULTON. } Assumpsit.

And the said plaintiffs, as to the plea of the said defendant, by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

And the said plaintiffs, as to the said plea of the said defendant, by him secondly above pleaded, saith that the said plaintiffs, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having or maintaining *his* aforesaid action thereof
19 against the said defendant. Because they say that defendant did not, on the first day of January, 1868, at Atlanta, or any other place, pay said plaintiffs divers large sums of money, amounting to said debt, or any sum of money, either at the time specified or at any other time or place, and that no part or portion of said debt has been paid, as said defendant in his said plea hath alleged. And this the said plaintiffs may be inquired of by the *country*, &c.

And the said plaintiffs, as to the said plea of the said defendant, by him thirdly above pleaded, saith that the said plaintiff', by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the said defendant. Because, they say that said action did accrue to them within six years previous to the bringing of said suit, and that they are not barred from the bringing of said suit, as defendant hath alleged, and this they pray may be inquired of by the court.

20 Wherefore the said plaintiffs pray judgment and their debt aforesaid, together with the dam'ges by them sustained on account of the detention thereof to be adjudged to them, &c.

HAMMOND & WELLBORN,
Plaintiffs' Attorneys

We, the jury, find for the plaintiffs ten thousand dollars for their principal debt, with interest and cost of suit, this 15th May, 1871.

A. J. McBRIDE,
Foreman.

UNITED STATES OF AMERICA,
Northern District of Georgia:

Afterwards, to wit: On the fifteenth day of May, one thousand eight hundred and seventy-one, before the judge of the said court came the within-named plaintiffs, by D. F. Hammond, their attorney within named, and the said defendant, Montroville C. Fulton, being called, appeared in court, by his attorney, John D. Pope, and the jurors of the jury whereof mention is within made likewise came, who, being
21 called, elected, tried, and sworn to speak the truth of the within contained, say that they find for the plaintiffs the sum of ten thousand dollars for their principal, and the sum of sixty-four hundred and forty-seven dollars and eighty-one cents for their interest to the fifteenth day of May instant, and the further sum of thirty dollars and fifty cents for their costs in this behalf expended. Wherefore, it is considered that the said plaintiffs do recover of the said defendant damages aforesaid ten thousand dollars for their principal, and sixty-four hundred and forty-seven dollars and eighty-one cents for their interest to the fifteenth day of May, 1871, aforesaid, in form aforesaid assessed, and also thirty dollars and fifty cents for their costs and charges aforesaid, to the said plaintiffs by the said court now here adjudged of increase and with the defendant's assent, and the said defendant in mercy, &c., this 15th day of May, 1871.

D. F. HAMMOND,
Plaintiffs' Attorney.

22	Prin. debt	$10,000 00
	Int. to 15th May, 1871	6,447 81
Costs		30 50

Judgment signed and filed 15th May, 1871.

W. B. SMITH, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Georgia District Court, ss:

The President of the United States to the marshal of the district of Georgia, greeting:

It is hereby commanded that of the goods and chattels, lands and tenements, of Montroville C. Fulton, you cause to be made the sum of ten thousand dollars principal, and sixty-four hundred and forty-seven dollars and eighty-one cents interest to May 15th, 1871, which Sarah Emma Loyd and Minerva Ella Loyd lately, in the district court of the United States for the northern district of Georgia, recovered against him for their damages which they had sustained on occasion of the not performing certain promises and undertakings then lately made by the said Montroville C. Fulton to the said Sarah E. and Minerva E. Loyd,
23 and also thirty and $\frac{50}{100}$ dollars, which, in the said court, were adjudged to the said Sarah E. and Minerva E. Loyd for their costs and charges by them about their suit in that behalf expended, whereof the said Montroville C. Fulton was convicted, as appears of record; and have you that money before the judge of the said court in the term of September, 1871, to render to the said Sarah E. and Minerva E. Loyd for their damages, costs, and charges aforesaid, together with this writ.

Witness the honorable John Erskine, judge of the district court of the

{ L. S. OF THE } United States for the northern district of Georgia, this
{ COURT. } third day of July, in the year of our Lord one thousand eight hundred and seventy-one.

W. B. SMITH, *Clerk.*

21 I hereby certify that, in obedience to the within execution, I have this day levied upon, as the property of the defendant, Montroville C. Fulton, all that tract of land situate, lying, and being in the county of Columbia and State of Georgia, on the waters of Germany's Creek, containing seventeen hundred and eighty-one acres, more or less, known as "Snow Hill," bounded north by land of Henry Hampton and John Boyd, east and northeast by land of B. B. Wilkerson and Robert Martin, south by land of Benjamin Reese, Albert Collins, Joseph H. Stockton, and the estate of Washington Stone, and west by land of James S. Hamilton.

Also all that other tract of land situate, lying, and being in the county of Greene and State of Georgia, on the waters of Little River, containing thirteen hundred and seventy-one acres, more or less, and adjoining land of Cordy Daniell, Mrs. Parhem Woodfin, (formerly Jones,) and others, being the same that was conveyed by A. P. Dearing to Montroville C. Fulton by deed dated 9th July, 1860.

25 Also all that tract of land situate, lying, and being in the county of Clarke and State of Georgia, on Wild Cat and Rose Creek', containing three thousand acres, more or less, and known as "Artondale."

Also, all those two lots in the county of Clarke and town of Athens, known in Thomas' survey as number' 38 and 39, containing in each one three acres one rod and twenty-nine poles.

Property pointed out by plaintiffs' attorney.

WM. H. SMITH,
U. S. Marshal, Dists. Ga.

26TH OCTOBER, 1871.

$32.00.

Rec'd of W. A. Wilson thirty two dollars, in full of costs on this fi. fa., this 1st August, 1871.

D. F. HAMMOND, *Atty.*

Rec'd of D. F. Hammond twelve dollars, clerk's and marshal's cost.

W. B. SMITH, *Clerk,*
Pr. W. H. HUNT.

AUG. 16TH, 1871.

UNITED STATES OF AMERICA,
Northern District of Georgia, ss :

I, W. B. Smith, clerk of the district court of the United States for
26 the northern district of Georgia, do hereby certify that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the cause therein mentioned, taken from and by me carefully compared with the originals filed and being of record in my office.

In witness whereof I have hereto set my hand and affixed the seal of the said district court this 11th day of November, A. D. 1871.

W. B. SMITH, *Clerk.*

(Indorsed:) In the district court of the United States for the northern district of Georgia. Sarah Emma Loyd & Minerva Ella Loyd vs. M. C. Fulton, assumpsit, &c. Transcript of record.

27 EXHIBIT B.

STATE OF GEORGIA,
Columbia County:

This indenture, made this the fourteenth day of September, eighteen hundred and sixty-four, betw'en Montroville C. Fulton, of the county & State aforesaid of the first part, and James S. Hamilton, of the same county and State, of the second part, witnesseth that said party of the first part, for and in consideration of the natural love and affection which he has and bears towards his wife, Virginia C. Fulton, as well as in consideration of the sum of ten dollars, to him in hand paid by said party of the second part at & before the sealing & delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, delivered, released, conveyed, & confirmed, and by these presents doth give, grant, bargain, sell, deliver, release, convey, & confirm unto the said party of the second part, and to his successors & assigns, subject to the uses & trusts hereinafter expressed, the following-described real & personal property, to wit: All that tract of land situate, lying, and being in the county of Columbia & State of Georgia, on the waters of Germany's Creek, containing seventeen hun-
dred and eighty-one acres, more or less, and known as "Snow
28 Hill," bounded north by land of Henry Hampton and John Boyd, east & northeast by land of B. B. Wilkerson & Robert Martin, south by land of Benjamin Reese, Albert Collins, Joseph H. Stockton, & estate of Washington Stone, & west by land of the party of the second part. Said tract consisting of three parcels, which were purchased from the party of the second part, B. B. Wilkerson & Robert Martin, and the deeds to which are of record in the clerk's office of the superior court of Columbia County, in book "Q," folio' 189, 190, & 224. Also all that other tract of land situate, lying, and being in the county of Greene and State of Georgia, on the waters of Little River, containing thirteen hundred and seventy-one acres, more or less, and adjoining lands of Cody Daniel, Mrs. Parham Woodfins, formerly James, & others, being the same which was conveyed by A. P. Dearing to the party of the first part by deed dated the ninth day of July, eighteen hundred and sixty. Also, all that other tract of land situate, lying, and being in the county of Clarke and State of Georgia, on Wild Cat and Rose Creeks, containing three thousand acres, more or less,
and known as "Artondale." Said tract consisting of three
29 parcels, namely, one of two thousand acres, conveyed by Samuel Bailey to the party of the first part by deed, recorded in the clerk's office of the superior court of Clarke County, in book W, folio 441; one of three hundred acres, conveyed by Thomas Sheats to the party of the first part by deed, recorded as aforesaid, in book W, folio 444; and the other of eight hundred and eight acres, conveyed by James C. Branch to the party of the first part by deed, recorded as aforesaid, in book X, folio 163. To all which deeds special reference is hereby made for a further description. Also, all those two lots in the county of Clarke and town of Athens, known in Thomas' survey as numbers thirty-eight (38) and thirty-nine, (39,) containing in each one three acres one rood and twenty-nine poles. Also, the following-described negro-slaves, namely, Cæsar, about seventy; Annie, about forty; Edmund, about twenty-two; Vina, about nineteen, and her child Joe, about one; Elizabeth, about seventeen; William, about fifteen; Jake, about fourteen; Mary, about ten; Emily, about nine; Delia, about seven; Sarah, about
thirty-five; Robert, about twenty-six; Martha, about thirty-seven;
30 Hager, about twenty-one; Henry, about eighteen; Phebe, about

seventeen; Betsey, about thirteen; Netta, about eleven; Davy, about sixty; Peter, about twenty-five; Vinney, about thirty; Clarke, about eighteen; Bill, about twenty-two: Adam, about forty; Martin, about thirty; John, about twenty-two; Mat, about thirty-two; Isabell, about thirty-two; Dick, about eighteen; Harriet, about sixty; Mose, about eighteen; Eliza, about twenty; Fanny, about fifty; Maria, about thirty; Robert, about eight; Betsy, about twenty-eight; Clarisa, about ten; Berry, about eight; Frank, about four; Fanny, about one; Melvina, about thirty; Dick, about thirty; Daniel, about sixty; Cady, about twenty-five; Joe, about five; Dell, about thirty; Henry, about ten; Isabella, about eight; Carolina, about four; Lina, about one; Rina, about thirty; Lindsey, about nine; Eliza, about six; Cicero, about three; Cilla, about one; Lannie, about twenty-seven; Matilda, about six; Lucy, about seventy; (short) Joe, about twenty-five; Aggy, about forty-two; Charity, about sixteen; Lenah, about fourteen; Randal, about twelve; Mary, about ten; Henry, about five; Clemo, about forty; Clarisa, about sixteen; Maria, about thirty;
31 Henry, about five; Clem, about three; Ned, about twenty-three; Betsey, about fifteen; Amanda, about ten; Nelson, about eight; Robert, about six; Jake, about three; John, about fifty; Elbert, about twenty-two; (long) Joe, about twenty; Lucy, about eighteen; Greene, about two; Lewis, about six months; Abby, about seventeen; Dow, about two; and an infant not named; Rilla, about sixteen; Israel, about twenty-four; Lokey, about thirty-five; Julia Ann, about twenty; Albin, about sixteen; Daniel, about fifteen; Nancy, about fifteen; Laura, about thirteen; Matilda, about eight; Alice, about five; Boston, about four; Rose, about three; Eliza, about one; Abe, about twenty-five; Camilla, about twenty-four; Martha, about ten; Henry, about eight; Robert, about four; Jane, about one; Tom, about twenty; Camilla, about eighteen; Richard, about two; Edmund, about one; Phebe, about twenty-one; Tom, about seven; Joe, about five, and a child about two years; Peter, about thirty; Jack, about twenty-eight years old.

Also, the standing crops on the said several tracts of land,
32 farming utensils, and supplies on hand, stock of every description, all the household and kitchen furniture at the dwellings on each place, the library and all other miscellaneous articles; also forty-five shares (45) of the capital stock of the Augusta factory, and eighty-five (85) shares of the capital stock of the Princetown factory, together with all and singular the houses, buildings, stables, yards, gardens, liberties, privileges, easements, commodities, emoluments, hereditaments, rights, numbers, and appurtenances whatever to said tracts of land lying, belonging, or in any wise appertaining, to have and to hold the said tracts of land and all and singular the premises hereby given, granted, bargained, sold, delivered, conveyed, and confirmed, with the hereditaments and appurtenances and with the issue and increase of said slaves, and the dividends which from time to time be declared upon said stock, unto the said party of the second part, his successors and assigns forever.

In trust, nevertheless, to and for the sole and separate use,
33 benefit, and behoof of Virginia F. Fulton, wife of the said party of the first part, for and during the term of her natural life, free from the debts, liabilities, or contracts of the said party of the first part, or any future husband, with remainder at her death to her children, then in life, or who have issue alive at that time, (the issue of any deceased child taking the parent's proportionate share;) but should she die, leaving no child or issue of a child surviving her, then with remain-

der to her heirs at law; provided always, and it is distinctly understood, that said Virginia F. Fulton, at any time after the execution of these presents, during coverture or widowhood, may, by her last will and testament, give, demise, or bequeath the entire trust estate, with income and increase thereof, to such person or persons as she may see fit, as if she were sole and unmarried; but in case of her death, without leaving any will, or of any legal disability to make a will, then the trust estate shall, after her death, vest as aforesaid in her children or other heirs in law;

and provided further, that the said Virginia F. Fulton shall be
34 authorized, at any time, upon the death, resignation, or removal of the party of the second part, or any of his successors, by instrument in writing, under her hand and seal, to appoint the said party of the first part, or any other fit and proper person, trustee in the place and stead of the previous trustee; and the person so appointed shall immediately and "ipso facto" become entitled to all the right and authority hereinafter granted, unless restrained in the deed of appointment, which said Virginia F. shall be authorized to do; and provided also, that the said party of the second part, or the party of the first part in the event of becoming trustee under this instrument, shall be authorized at any time to sell, mortgage, lease, exchange, or otherwise dispose of at discretion the trust estate, or its increase, or any portion thereof, re-investing the proceeds in such other property, real, personal, or mixed, as may be deemed best by him; and shall also be authorized, for the purpose of supporting, maint'ing, and educating the said Virginia F. and her children, to encroach upon the corpus of the es-
35 tate without authority from any court. That all subsequent trustee or trustees shall only be authorized to sell, lease, or exchange and to re-invest upon the written consent of said Virginia F., and, for the purpose of support, maintenance, and education, shall only be allowed to encroach upon the corpus during the existing war, and upon the written direction of said Virginia F. so to do.

And provided, finally, that the separate receipt of the said Virginia F., notwithstanding coverture, shall be a sufficient and legal discharge to the party of the second part or party of the first part (in the event of his appointment as trustee) for the yearly income of the trust estate, or any portion of the corpus consumed and maintainance and education, and that they shall not be required to make annual or other returns to the court of ordinary or other court. That in the event of the death of the said Virginia F. without making a will, and leaving children or issue of children, the party of the second part or the party of the first part, if the trustee, shall be authorized to keep the estate to-
36 gether, exercising the same power hereinbefore granted until such time as he shall deem it advisable to distribute the estate among the remainder-men, but in the event of the death of the said Virginia F. intestate, and leaving no child or issue of a child surviving her, then the trustee for the time being is to distribute the estate among the heirs-at-law immediately.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written in duplicate.

MONTROVILLE C. FULTON. [L. S.]

Signed, sealed, and delivered in presence of us—

ROBERT MARTIN.
B. B. WILKERSON.
J. E. SMITH.
E. J. SHORT, J. I. C.

STATE OF GEORGIA,
Columbia County:

I, James S. Hamilton, the trustee named in the foregoing deed, hereby resign my trust, and the powers conferred upon me thereby.

Witness my hand and seal this fourteenth day of September, 1864, in duplicate.

JAMES S. HAMILTON. [L. S.]

37 Signed, sealed, and acknowledged & delivered in presence of—
ROBERT MARTIN.
B. B. WILKERSON.
J. E. SMITH.
E. J. SHORT, J. I. C.

STATE OF GEORGIA,
Columbia County:

Know all men by these presents that I, Virginia F. Fulton, of the county and State aforesaid, by virtue of the authority contained in the foregoing deed, have nominated, constituted, and appointed Montroville C. Fulton, of the said county and State, trustee, under the provisions of said deed, in the place and stead of James S. Hamilton, who has resigned, and I do hereby vest in him the fee-simple title to all the property named in said deed, subject to the uses and trust therein set apart.

In witness I have hereunto set my hand and seal this the fourteenth day of September, eighteen hundred and sixty-four, in duplicate.

VIRGINIA F. FULTON. [L. S.]

Signed, sealed, and delivered in presence of—
ROBERT MARTIN.
B. B. WILKERSON.
J. E. SMITH.
E. J. SHORT, J. I. C.

38 STATE OF GEORGIA,
Columbia County:

I accept the position of trustee conferred on me by the foregoing deed of appointment, and agree to hold the property named in the deed of settlement subject to the uses and trusts therein set forth.

Witness my hand and seal this September fourteenth, 1864, in duplicate.

MONTROVILLE C. FULTON.

In presence of—
B. B. WILKERSON.
J. E. SMITH.
ROBT. MARTIN.
E. J. SHORT, J. I. C.

GEORGIA,
Columbia County:

OFFICE CLERK SUP'R COURT.

I hereby certify that the foregoing eight pages contain a true copy of deed of trust of Montroville C. Fulton to his wife, Virginia F. Fulton, as appears of record in said office.

Witness my hand and seal of office this Nov. 18, 1871.

W. W. SHIELDS,
D. Clerk.

39 UNITED STATES OF AMERICA,
Southern *District of Georgia:*

You, Montroville C. Fulton, do swear, that what is contained in your foregoing bill is true, so far as the same comes within your own knowledge, and all else therein contained you believe to be true.

Sworn to and subscribed before me Nov. 24th, 1871.

M. C. FULTON.

Sworn to and subscribed before me this Nov. 24th, 1871.

[COMM.'S SEAL.] JAS. McPHERSON,
U. S. Commr.

40 AT CHAMBERS,
Savannah, Ga., Nov. 24, 1871.

Read and sanctioned.

Let this bill be filed, and subpœna issue as prayed.

It is ordered that the respondents show cause, before me, in the United States court room, in Atlanta, Georgia, at 10 o'clock a. m. on the 23d day of December next, why an injunction should not issue, as prayed.

It is further ordered that the marshal postpone all further proceedings in the execution in his hands, (the same described in the bill,) upon the complainants filing in the clerk's office of the United States district court at Atlanta, bond with security in the sum of five thousand dollars, conditioned to pay respondents, their heirs and assigns, all damages which they may sustain by reason of the granting of this restraining
41 order, in case the temporary injunction prayed for shall be denied.

The bond of complainant, and the oath of justification, may be taken before any judicial officer of the State of Georgia.

Nov. 24, 1871.

JOHN ERSKINE,
U. S. Judge.

Filed Dec'r 1st, 1871.

W. B. SMITH, *Clerk.*

In the district court of the United States for the northern district of Georgia.

M. C. FULTON, TRUSTEE, &C.,
vs.
SARAH E. LOYD & MINERVA E. LOYD. } Bill for injunction.

Know all men, that we, Montroville C. Fulton, as trustee for Virginia F. Fulton, as principal, and Jas. S. Hamilton, as surety, are held and firmly bound unto Sarah E. Loyd and Minerva E. Loyd, their heirs and assigns, in the sum of five thousand dollars. Provided nevertheless that if the said Montroville C. Fulton, as trustee as aforesaid, shall pay all damages which the said Sarah E. Loyd and Minerva E. Loyd, their heirs and assigns, may sustain by reason of the granting of an order in the above-entitled cause, dated November 24th, A. D. 1871, to temporarily restrain the marshal's sale in the bill described, in case the chancellor on the hearing of the application for a temporary injunction shall refuse the same, then this bond to be void; else to remain of force.

42

M. C. FULTON, *Trustee.* [SEAL.]
JAS. S. HAMILTON. [SEAL.]

Signed, sealed, and dated before me this the A. D. 1871.
J. D. FRIERSON, *J. P.* [SEAL.]

STATE OF GEORGIA,
Clarke County:

Jas. S. Hamilton comes before me, and, after being sworn, says that he is worth the sum of five thousand dollars over and above all debts and liabilities and all property exempt under the homestead and exemption laws of Georgia.

JAS. S. HAMILTON.

Sworn to and subscribed before me 27th November, 1871.

J. D. FRIERSON, *J. P.* [SEAL.]

THOMSON, *Ga:*

This certifies that M. C. Fulton, trustee, &c., signed the within bond in my presence, this November 28th, 1871.

A. B. THRASHER,
Ordinary of McDuffie County.

43 Filed in office 1st day of Decr., 1871.

W. B. SMITH, *Clerk.*

United States of America, northern district of Georgia.

M. C. FULTON, TRUSTEE, &C., COMPLAINANT, and SARAH E. LOYD & MINERVA E. LOYD, DEFENDANTS. } In equity.

The President of the United States to Sarah E. Loyd and Minerva E. Loyd.

44 For certain causes offered before the judge of the district court of the United States for the northern district of Georgia, in equity, you and each of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court in the city of Atlanta, at rules to be had on the first Monday in January next, to answer to those things which shall then and there be objected to you on behalf of the complainant, M. C. Fulton, trustee for Virginia F. Fulton, and to do further and receive what the said court shall have considered in this behalf and this you may in nowise omit under penalty of five hundred dollars; and have here this writ.

Witness the honorable John Erskine, judge of the district court of the United States for said district, this first day of December in the year of our Lord one thousand eight hundred and seventy-one. (L. S. OF THE COURT.)

W. B. SMITH, *Clerk.*

45 M. C. FULTON, TRUSTEE, &C., *vs.* S. E. LOYD & M. E. LOYD. } Bill, &c.

Complainant, by leave of the court first had, amends his bill as follows:

Complainant positively avers that the deed of settlement made by him, a copy of which is attached to the original bill, was not made with intent to hinder, delay, or defraud respondents, or their said father, James Loyd, or any other creditor of Montroville C. Fulton, but on the contrary said deed was made in good faith, because said Fulton had frequently promised and agreed to make it, and to protect the property of the said Virginia F. (if in such way it could be done) from confiscation for the participation of said M. C. Fulton in the rebellion.

And complainant positively avers and asserts that it is 'trictly true that after the making of said deed of settlement the said M. C.
46 Fulton was solvent, and that he had reserved out of said deed of settlement, and still held in his own name and entirely unencumbered, ample property with which to pay, and out of which the said Fulton intended to pay, all debts which he owed.

At the time the original bill was drafted said Fulton was from home and was unable to state in detail in what the property reserved by him out of said deed of settlement consisted, and he cannot now state with absolute*ly* exactness all the items of said property. But orator here gives a statement of the different items of property so reserved which is substantially correct.

($10,000.) One-fifth of the property known as the Lewis Iron-Works in Barton County, Georgia. This one-fifth interest had cost orator sixty thousand dollars in confederate currency, and was worth in good currency at the time of the purchase ten thousand dollars or more.

($2,000.) One-half interest in a house and lot in Covington,
47 Georgia, which half-interest was worth two thousand dollars in good currency. Orator may have sold this half-interest before the deed of settlement, but if he did he had the proceeds invested in bonds, which were convertible in property of equal amount and value.

($5,000.) Five thousand dollars in bonds of the city of Augusta, Georgia, issued on a gold basis, which bonds were perfectly good and solvent.

($2,000.) Two thousand dollars in the bonds of the East Tennessee and Georgia Railroad Company, issued on a gold basis, and good and solvent securities.

($5,000.) Five thousand dollars in the bonds of the State of Georgia, issued before the rebellion, which were also good and solvent securities.

($5,000.) Four negro*e* slaves; three men and one boy almost grown. One an excellent cook, driver and house-servant, and two good tanners; the other learning the trade of tanner. Said slaves were worth, in gold, at ante bellum prices, at least five thousand dollars.

48 ($2,500.) One-half interest in a celebrated stallion named Idol, sold since the rebellion to Gen'l and Dr. Cheatham of Nashville, Tennessee, for five thousand dollars in U. S. currency.

($5,000.) A lot of cotton and tobacco in bales and boxes, the precise amount of which orator cannot now recollect, but they were of the value of five thousand dollars in good currency. Orator believes this cotton and tobacco was worth as much as ten thousand dollars in good currency.

($1,000.) Besides all this good property, orator possessed many other articles of property which he cannot now enumerate; and not less than twenty thousand dollars in confederate currency and securities.

JOHN D. POPE,
Complt.'s Solr.

UNITED STATES OF AMERICA,
Northern District of Georgia :

Montroville C. Fulton comes before me and, being sworn, says
49 that the foregoing amended bill is true to the best of deponent's knowledge and belief.

M. C. FULTON.

Sworn to and subscribed before me Dec. 23rd, 1871.

JNO. L. CONLEY,
U. S. Com., N. D. G.

Filed in office Dec. 26, 1871.

W. B. SMITH, *Clerk.*

In the dist. court of the United States for the northern district of Georgia.

MONTROVILLE C. FULTON
vs.
SARAH EMMA LOYD & MINERVA ELLA LOYD. } Bill, &c.

These defendants reserving to themselves all right of exception to the said bill of complainant, for answer thereto say:

That they know not and have not been informed, save by the said complainant's bill, and cannot set forth as to their belief or otherwise whether the said complainant holds the property levied on by virtue of the said fi. fa. in trust for his wife, as charged, by virtue of a
50 deed dated the fourteenth day of September, eighteen hundred and sixty-four, but further answering saith that if he does, that said deed was executed more than three years after the making of the note upon which said judgment was obtained, the note being made on the sixteenth day of May, 1861, & deed of gift being made the 14th day of September, 1864.

These defendants, further answering, state that they are informed by complainant's bill, and believe it to be true, that not one dollar's worth of the property levied on by said fi. fa. was ever the property of the said Thomas N. Hamilton, the father-in-law of complainant, but was property purchased by complainant long after the death of the said Thomas N. Hamilton, and that no part or portion of the same was purchased even with the proceeds of the said Thomas N. Hamilton's estate. But if it should appear that any monies arising from the property once owned by said Hamilton was used in the purchase of said lands so levied on, it further appears by said bill that no part of said monies or
51 said estate was so used in said purchase until long after they had become the absolute and unqualified estate of said complainant.

Defendants, further answering, say that they knew not and have not been informed, except by complainant's bill, that any conference or agreement was ever made between complainaint and the said Thomas N. Hamilton in relation to the property to be given by said Hamilton to complainant's wife; but say that they are informed by said bill that if any such agreement was ever made between complainant and the said Hamilton, that it was never executed, and that said Hamilton lived nearly ten years after the intermarriage of said complainaint with the daughter of the said Thomas N. Hamilton, and that no deed or will was made by the said Hamilton limiting said estate to the exclusive enjoyment of said complainant's wife. And such was the pecuniary condition and moral habits of complainant at and after the death
52 of the said Thomas N. Hamilton that a court of equity could not interpose to appropriate the said estate to the exclusive use of the wife of said complainant.

These defendants further answering, say that from the facts contained in said complainant's bill it is manifest that the said Thomas N. Hamilton did not have, as charged, any intention whatever of confer'ing his real estate upon complainant's wife for her sole and separate use. And the manner in which he disposed of a portion of his estate to complainant and his said daughter during his life-time negatives the charge made in complainant's bill, "that he agreed with the said Hamilton that whatever estate he might receive from him should be for the sole and separate use of his said daughter" in this, to wit, that one or two years after the marriage of complainant to the daughter of the said Hamilton, said Hamilton gave complainant a farm in Newton County worth three thousand two hundred dollars, and gave at the same

53 time to his daughter for her sole and separate use thirty-five slaves; and afterwards, in 1859, departed this life, making no will, which clearly negatives the charge that his estate was intended for the sole use of complainant's wife, and that if such intention ever existed it had been wholly abandoned before the said Thomas N. Hamilton's death.

These defendants, further answering, say that they know nothing of the promises made by complainant to the administrator of the said Thomas N. Hamilton, except as they are informed by the said complainant's bill, which show' very conclusively that said estate had been in his hands for nearly five years before the matter was attended to of making said deed, which suggests the opinion very clearly that the fear of confiscation may have been a stronger motive in the execution of said deed than either the verbal contract made with Thomas N. Hamilton more than ten years before, or the promises made to the adminis-
54 trator, which was of four years' standing at the execution of the deed.

These defendants, further answering, say they do not know whether the property conveyed by complainant to his wife was the property received in right of his wife, only as they are informed by complainant's bill, which said bill does not show such a state of facts to exist, but on the contrary shows that all the property levied on by virtue of said fi. fa. was property purchased by complainant and deeded to him long after the death of the said Thomas N. Hamilton, for a consideration expressed in said deed as received from complainant.

These defendants, further answering, admit that the purchase by complainant was made, as charged, of the Washington Hall, and that the payments were made as charged, but knew nothing of any offer to pay off said notes in confederate money or otherwise, and can only say in answer to the allegation contained in complainant's bill, that he is "still able to pay," that payment would save all further litigation in
55 this case. And these defendants presume that the crops are gathered by this time, as sufficient time has elapsed for that purpose since the filing of complainant's bill.

These defendants, further answering, say that they cannot possibly know the intention of complainant in the execution of the deed to his wife; but further state that it matters not what his motives may have been, the effect of the deed was to defraud them if it should be sustained.

These defendants, further answering, say that they know nothing of the amount of property complainant may have had at the time of the execution of the deed; but know that he has never applied any part or portion of it to this debt, although he has been frequently urged to pay said debt, and has as frequently promised to do so.

All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs & charges in
56 this behalf most wrongfully sustained.

D. F. HAMMOND &
B. H. HILL,
Defendants' Solicitors.

STATE OF GEORGIA,
Fulton County:

Sarah Emma Wilson, formerly Loyd, one of said defendants, comes before the undersigned and, after being sworn, says that the facts contained in the foregoing answer, so far as they come within her own

knowledge, are true, and so far as they are derived from the information of others she believes them to be true.

SARAH EMMA WILSON.

Sworn to and subscribed before me this 13th day of Feb'y, 1872.
J. T. AKRIDGE, *J. P.*

Filed in office this the 14th day of February, 1872.
W. B. SMITH, *Clerk.*

M. C. FULTON, TRUSTEE, &C., *vs.* S. E. & M. E. LOYD. } In equity.

57 It is ordered, by consent of counsel, that all testimony in the above-stated case be taken by rules day in April next, and that the case be for final hearing at any time when the court can hear the same thereafter.

March 4, 1872.

JOHN D. POPE,
Complt.'s Solr.
D. F. HAMMOND,
Respondents' Atty.

In consideration of the above order, it is agreed that the restraining order heretofore granted be continued until the final hearing.

March 4, 1872.

D. F. HAMMOND,
Defts.' Atty.

Filed March 4, 1872.

W. B. SMITH,
Clerk.

NORTHERN DISTRICT OF GEORGIA:

M. C. FULTON, TRUSTEE, *vs.* SARAH E. LOYD AND MINERVA E. LOYD. } In equity.

The replication of complainant to the answer of defendants.

58 This repliant, saving all exception to the insufficiencies of the said answer, for replication thereto says that he will aver and prove his said bill to be true and sufficient in law, without this, that any other matter or thing in the said answer contained, material or effectual in law to be replied to, confessed and avoided, traversed or denied, is true.

All which this repliant is and will be ready to aver and prove as this honorable court shall direct, and prays as in his bill he has prayed.

JOHN D. POPE,
Complainant's Solr.
By A. T. AKERMAN.

Filed in office April 10, 1873.

W. B. SMITH,
Clerk.

59 UNITED STATES OF AMERICA,
Northern District of Georgia:

In the district court of the United States for the northern district of Georgia.

J. C. Turner, jr., Emory Speer, greeting:

Know ye that, in confidence of your prudence and fidelity, you are hereby appointed, and by these presents are vested (any two or more of you) with full power and authority, diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause pending and to be tried in the said court, in equity, M. C. Fulton complainant, and S. E. Loyd and M. E. Loyd defendants, as well on the part of the complainant as on the part of the defendants, or either of them; and it required of you (or any two or more of you) that on certain days, and at certain places, by you to be appointed for that purpose, you do cause the said witness to come before you,
60 and, then and there, to examine him upon the said interrogatories, on his corporal oath first taken before you (or any two or more of you) on the Holy Evangelists; and that you do take such, his examination, and reduce it into writing, and when you shall have so taken it you are to send the same to the clerk of the district court of the United States for the northern district of Georgia, at Atlanta, closed up and under your seals (or the seals of any two of you) distinctly and plainly set, together with the said interrogatories and this writ; and further, that you, and each of you, before you act in, or be present at, the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you, or either of you, jointly or severally, to administer such oath to the rest, or any other of you, upon the Holy Evangelists. And it is further required of you, that all and every of the clerk
61 or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness to be examined by virtue of these presents shall, before he or they be permitted to act as clerk or clerks as aforesaid, or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you, or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable John Erskine, judge of said district court, this 15th day of March, in the year of our Lord one thousand eight hundred and seventy-two, and 96th year of American Independence.

[L. S. OF THE COURT.] W. B. SMITH, *Clerk.*

62 *The commissioner's oath.*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission, upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the said commission named, or any

of them, by virtue of the said commission, until publication shall pass by rule or order of the said court. So help you God.

J. C. TURNER, JR., *Com'r.*
EMORY SPEER, *Com'r.*

Sworn to & subscribed before me, at Athens, Ga., April 1st, 1872.

J. C. TURNER, JR.
EMORY SPEER.

63 M. C. FULTON, TRUSTEE, *vs.* S. E. LOYD & M. E. LOYD. } In equity.

Interrogatories to be propounded to James S. Hamilton, a witness for complainant, residing at Athens, Georgia.

1. Do you know complainant, and his wife, Virginia Fulton? What is the relationship between you and Mrs. Fulton?

2. Do you or not know of any agreement which M. C. Fulton is alleged to have made about a settlement of the property inherited by Mrs. Fulton? State all you heard said Fulton say on that subject.

POPE & BROWN,
Plff's Att'ys.

GEORGIA, *Clarke County:*

At ATHENS, *April* 1st, 1872.

In the district court of the United States for the northern district of Georgia.

M. C. FULTON, TRUSTEE, *vs.* S. E. LOYD & M. E. LOYD. } In equity.

64 Examination and deposition of James S. Hamilton, a witness produced, sworn, and examined by the undersigned commissioners, in virtue of the annexed commission, issuing out of the honorable the district court of the United States for the northern district of Georgia, taken and reduced to writing, in Athens, on this the 1st day of April, 1872.

JAMES S. HAMILTON, aged fifty-four, being duly sworn, answering, saith as follows, to wit:

To the first interrogatory witness answers: I do. Mrs. Fulton is my sister.

To the second interrogatory witness answers: I was the administrator of my father, Thos. N. Hamilton, from whom Mrs. Fulton inherited the property in question. I do know of the existence of an agreement made by M. C. Fulton to settle the property inherited by Virginia Fulton, from her father, on her. Preceding the distribution of my father's estate, which took place in the latter part of December, 1859, M. C. Fulton, at my house in Columbia, now McDuffie County, prom-
65 ised solemnly and religiously to settle this property on my sister, Virginia Fulton. He has frequentiy since that time recognized the promise, and always said that he would comply with it and make the

said settlement. I have frequently heard him talk on the subject. I cannot remember the details of such conversations.

JAMES S. HAMILTON.

Answered, sworn to and subscribed before us at Athens, Geo., April 1st, 1872.

EMORY SPEER, *Com'r.* [SEAL.]
J. C. TURNER, JR., *Com'r.* [SEAL.]

UNITED STATES OF AMERICA,
Northern District of Georgia:

In the district court of the United States for the northern district of Georgia.

W. F. ONEAL, GEO. P. STOVALL, greeting:

Know ye that, in confidence of your prudence and fidelity, you
66 are hereby appointed, and by these presents are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever, upon certain interrogatories to be exhibited to you in a certain cause, pending and to be tried in the said court, in equity, M. C. Fulton, complainant, and S. E. Loyd and M. E. Loyd, defendants, as well on the part of the complainant as on the part of the defendants, or either of them.

And it is required of you, (or any two or more of you,) that on certain days, and at certain places, by you to be appointed for that purpose, you do cause the said witness to come before you and then and there to examine him upon the said interrogatories on his corporal oath first taken before you, (or any two or more of you,) on the Holy Evangelists; and that you do take such his *examine* and reduce it into writing; and when you shall have so taken it you are to send the same to the clerk of the district court of the United States
67 for the northern district of Georgia, at Atlanta, closed up and under your seals, (or the seals of any two of you,) distinctly and plainly set, together with the said interrogatories, and this writ; and further, that you, and each of you, before you act in, or be present at, the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereunto annexed; and full power is given you, or either of you, jointly or severally, to administer such oath to the rest, or any of you, upon the Holy Evangelists. And it is further required of you, that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witness to be examined by virtue of these presents, shall, before he or they be permitted to act as clerk or clerks as aforesaid, or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you, or any of you, jointly or separately, to administer such
68 oath to such clerk or clerks upon the Holy Evangelists.

Witness the Honorable John Erskine, judge of said district court, this 15th day of March, in the year of our Lord one thousand eight hundred and seventy-two, and 96th year of American Independence.

[L. S. OF THE COURT.] W. B. SMITH, *Clerk.*

The commissioner's oath.

You shall, according to the best of your skill and knowledge, truly, faithfully and without partiality to any or either of the parties in this

cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the above commission, upon the interrogatories now produced and left with you; and you shall not disclose or make known to any person or persons whatsoever,
69 except to the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the said commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the said court. So help you God.

W. T. ONEAL.
GEO. P. STOVALL.

Sworn to and subscribed before me at Thomson, Ga., March , 1872.

M. C. FULTON, TRUSTEE, &C., *vs.* S. E. LOYD & M. E. LOYD. } In equity.

Interrogatories for Montroville C. Fulton, a witness for complainant, residing near Thomson, Georgia.

1. State your relation to the parties in whose behalf the bill was filed.

2. State whether or not the copy deed of settlement attached to
70 the original bill is a true copy of the original, and state where the original is.

3. State whether or not the said deed of settlement is correctly dated. Who drew the deed, where was it drawn, and where executed?

4. From what source was the property covered by the deed of settlement derived? Give the history of the property, and state what changes had been made as to the manner in which it had been invested from the time when you first had anything to do with its management.

5. State what conversation, if any, you had with Col. Hamilton, father of Mrs. Fulton, about the property embraced in the deed before referred to. When did you have these conversations?

6. After Col. Hamilton's death, was there any understanding between you and Col. Hamilton's administrator as to this property? If yea, state what that conversation was.

7. State what your motives were for making the deed of settlement. State whether or not it was made to hinder, delay, or defraud any
71 creditor or creditors.

What debts did you owe at the date of the settlement? What enterprises or speculations which might have made you rich or rendered you bankrupt were you engaged in?

9. What property did you have left after the making of the deed of settlement? State the character and value of each and every piece of property fully. State the kind of currency in which any stocks or bonds which you may have had were payable; and state everything that will illustrate or explain your estimates of value.

10. State whether or not you are now able to pay the claim of defendants? If not, state when and how you became unable.

11. State what your disposition has been in regard to the payment of the claim now held by defendants. State any facts within your recollection that may tend to show whether you were willing to pay it.

POPE & BROWN,
Pl'ff's Att'ys.

72 First cross-interrogatory. How much money were you worth at the time of your intermarriage with your wife, for whom you are now acting as trustee, and in what did it consist?

2nd do. What disposition did you make of said property, and when did you dispose of it, and to whom?

3rd do. Was the products of your property kept separate from the products of your wife? If yea, state the separate products of each down to the close of the war.

4th do. Did your wife's father, Thomas N. Hamilton, ever give you or his daughter, (your wife,) any land except the farm in Newton County? If yea, state when, and where the land lay and its value.

5th do. Who purchased the Snow Hill tract of land in Columbia County, seventeen hundred and eighty-one acres, and from whom
73 was it purchased, and to whom was the deed made, and who made the payments, & with what funds was the payments made, and how do you know? And was there any separate account made of the money that paid for said lands, or any intention to confer said lands at the time of purchase upon your wife for her sole and separate use?

6th do. Who purchased the farm in Greene County, containing thirteen hundred and seventy-one acres; and when was it purchased, and from whom was it purchased, and from whom was the deed made, and to whom, and what is the date of the deed?

7th do. What fund purchased this farm—the fund set apart by your father-in-law for your wife, or your own money, or both? And state how you know these facts.

8th do. Who purchased the farm in Clarke County, Ga., con-
74 taining three thousand acres, more or less, and when was it purchased, and from whom was it purchased; who made the deed or deeds to it, and to whom were the deeds made, and when were they made; who paid for said lands and what amount, and out of what fund were they paid for, and state how you know?

9th do. Please state how you became the owner of the two town lots in the city of Athens, who they were purchased from, and when & to whom the deed was made, and out of what particular fund the payment was made for them.

10th do. Did you not buy and sell, & invest the money derived from Thomas N. Hamilton's property, through your intermarriage with his daughter, as your own, without making any distinction whatever, down to the time of making the deed of gift?

11th do. Was not the chief inducement to making the deed of gift an exemption from confiscation, and was it not your purpose to pay
75 this and all other honest debts you owed, and did any intention exist in your mind, at the time of making said deed, of relieving yourself thereby from the payment of this or any other debt you owed? Please state fully.

12th do. If you say you had a conversation about the property embraced in the deed, with Thomas N. Hamilton, your wife's father, state when that conversation occurred, and how often, and all that was said in each, and what property was mentioned. Please specify particularly. State as near as you can the date of each conversation.

13th do. How much property did Thomas N. Hamilton turn over to you, in his life-time, and what portion of it was deeded to his daughter separately, and what portion of it was given without deeding it to his daughter? Please state fully.

15th do. How was the Newton County farm, mentioned in your bill, given to your wife as separate property, or to you? Did said Thomas

76 N. Hamilton ever give you or your wife any other land but the Newton County farm, and if so, how did he give it to you or to his daughter, as a separate property? Did he make you a deed to the Newton County farm; if yea, what was the date of it?

16th do. If you state you have been able since the war to pay this debt, why have you not done so, and why are you not now able? Have you not been repeatedly urged to pay this debt, and have you not as often promised most faithfully to do so? Why have you not paid it? State fully.

D. F. HAMMOND,
Plaintiff's Attorney.

77 In equity in U. S. dist. ct., N. D. Ga.

M. C. FULTON, TRUSTEE, &C.,
vs.
S. E. & M. E. LOYD.

Answers to direct interrogatories.

No. 1. My wife and children are the parties at interest.

No. 2. It is a true copy of the original deed from the record. The original is not now in my possession, nor do I know where it is.

No. 3. The date is correct. Deed was drawn by F. H. Miller, of Augusta, and executed at my house in Columbia, now McDuffie County.

No. 4. It was derived from the estate of Thos. N. Hamilton, my wife's father, and, with the exception of household furniture, the New-
78 ton County farm and stock on same, and about thirty-five slaves—which slaves were settled on my wife by her father, Thos. N. Hamilton, himself, in his life-time—the property, when it came into my hands, consisted of money, stocks, R. R. & city of Augusta bonds, and certain promissory note on D. Antignac, of Augusta, for about ($16,000.00) sixteen thousand dollars, amounting in all to about one hundred thousand dollars; and of the slaves conveyed by the deed of settlement, excepting their increase, after the distribution of the estate of Thos. N. Hamilton, & before the making of said deed, and fifty-five to sixty slaves on the Redclyffe Place, in Greene County. About twenty-one thousand dollars of these bonds and stocks were retained by Dr. J. S. Hamilton in his hands to pay for the Snow Hill plantation, and stock and supplies on same. Seventy-five thousand dollars were paid to George W. Evans, of Augusta, Ga., for about seventy slaves and two thousand acres of land, mules, and other stock, crops on same, in Burke County. The entire Burke property afterwards was sold to Thomas J. Wyatt, of Au-
79 gusta, for one hundred and sixty or sixty-five thousand dollars in Confederate tr. notes. Sixty-two thousand dollars of the proceeds of the Burke property was afterwards paid to A. P. Dearing, of Athens, for the Redclyffe plantation in Greene County, mules, & stocks on same, and about sixty slaves, which I had bought of him before the war commenced, during the year 1860. The larger portion of the remainder was invested in cotton and tobacco.

The Snow Hill place and the Redclyffe place are a portion of the property levied on by the U. S. marshal, under the execution of Loyd vs. M. C. Fulton.

No. 5. I had one conversation before and frequent conversations after my marriage, with Thos. N. Hamilton, my wife's father, substance of which was, that all property coming to my wife from his estate should be

settled on her for sole use of herself and children, in all which conversation I told him that if he should neglect to settle it himself I would settle it on her myself.

80 No. 6. After Thos. N. Hamilton's death, some time was spent in search of the will which all his family believed to be in existence, and when it became doubtful whether he had left any will, I renewed my promise to Dr. Hamilton in regard to settling the property upon my wife, which I had made with his father. Dr. Hamilton was the administrator on his father's estate.

No. 7. I made the deed of settlement finally, because I was under promise to do so, as above stated, and for the additional reason that I wished to place my wife's property, if possible, so it would not be subject to confiscation for or on account of any participation in the rebellion by me, and not to hinder, delay, or defraud creditors.

No. 8. I did not owe, to the best of my knowledge and belief, over two thousand dollars, outside of the Loyd debt at the time of the settlement, and aver I had ample means or funds in hand to have paid all indebtedness at the time the deed was made. I was engaged in no enterprises or speculations at the time calculated to make me rich or bankrupt.

81 No. 9. I reserved out of the deed of settlement one-fifth interest in the Lewis Iron Works in Bartow County, which fifth interest was worth at least ten thousand dollars in U. S. currency; one-half interest in house and lot in Covington, which half interest was worth at least two thousand dollars in U. S. currency, which half interest it is possible I had sold before the settlement, but had the proceeds, which were convertible into property of equal value; five thousand dollars in bonds of the city of Augusta, issued before the war and payable in good currency; two thousand dollars E. T. & Ga. R. R. bonds, payable in good currency, having been issued before the war; five thousand dollars in State (of Ga.) bonds issued before the war; (4) four negro slaves —three men and one boy almost grown, one an excellent cook, driver, and house boy, two tanners and one working at the trade, worth at least five thousand dollars in gold, ante bellum prices. One-half interest in the celebrated horse "Idol," sold since the war to General & Dr. Cheatham, of Nashville, for five thousand dollars in U. S. cur-

82 rency; cotton and tobacco, worth, to the best of my judgement, five thousand dollars in U. S. currency, but more likely twice this amount; and money & other articles of personal property worth not less than twenty thousand dollars in confederate currency.

No. 10. I am not now able to pay the claims of defendants in this bill. Was able to have paid them at any time until after the losses I sustained in planting in Arkansas, 1866 & '67. If all my losses of 1866 & '67 could have been collected out of the property levied on, which could have been done but for the deed, it would have taken a large portion, if not all of it.

No. 11. My disposition and intention always have been to pay defendants' debt. I offered to pay it and actually tendered the full am't of said debt in the spring or summer of 1862, in confederate currency, when it was but little depreciated, and but for my losses of 1866 & '67, I should have paid it long ago.

M. C. FULTON.

83 Answered, sworn to, and subscribed before me this 30th day of March, 1872.

W. T. ONEAL, *Com.* [L. S.]
GEO. P. STOVALL, *Com.* [L. S.]

Answers to cross-interrogatories.

No. 1. I was worth nothing outside of personal apparel except a few hundred dollars in money and an undivided interest in my father's estate, which did not exceed one thousand dollars in value.

No. 2. I cannot now say how the money was spent. The undivided interest in my father's estate was never drawn out by me—but given to my brothers and sisters about the year 1856 or '57, who I thought needed it more than I did.

No. 3. There was no increase from property I had at the time of my marriage. Property made after marriage was not kept separate from that of my wife by any very particular account. None of it went
84 into the property levied on.

No. 4. He did not.

No. 5. It was purchased by me of Dr. J. S. Hamilton, on the 25th day of October, 1859, for seventeen thousand five hundred and fifty dollars, before the distribution of the estate of Thomas N. Hamilton was completed, to pay for which Dr. J. S. Hamilton, adm'r of his father's estate, retained certain bonds and stocks out of my wife's share of her father's estate, for which bonds & stocks I receipted him as adm'r, and kept no further account of them. It was expressly understood and agreed upon by myself and Dr. Hamilton, who was the administrator of his father's estate at the time of this purchase, that I should settle this place upon my wife after the estate was divided and all the legatees fully settled up with. I know these facts because I was a party to the transaction. The deed was made to me.

No. 6. I purchased the farm known as Redclyffe, in Green County,
85 of A. P. Dearing, on the ninth day of July, 1860, for the sum of twelve thousand dollars. Deed was made to me. The notes given to Dearing for this place and the negro slaves, stock, crops, &c., on it, were paid for subsequently out of the proceeds of the Burke County property, as before stated.

No. 7. I have already explained how this place was paid for—entirely out of the proceeds of the Burke County property, which property, as before stated, had been purchased by me of Geo. W. Evans, of Augusta, with the De Antignac note and stocks & bonds received by me from the estate of Thos. N. Hamilton, my wife's father. I know these facts because I was a party to the transaction.

8th. I purchased the farm in Clarke County (two thousand acres) from Sam'l Bailey, for the sum of fourteen (14) thousand dollars in confederate tr. notes. Deed was made to me and dated 15th day of October, 1862. It was paid for out of the proceeds of cotton made on the Snow Hill, the Burke, & Greene County places. Three hundred (300) acres of Thos. W. Sheats, on 26th day of February, 1863, for the sum of twenty-
86 five hundred dollars in confederate currency, which was paid out the proceeds of cotton made on our plantations in Burke, Columlumbia, & Greene. Seven hundred acres from James C. Branch, on 2d day of February, 1864, for the sum of seven thousand two hundred and twenty-two dollars in confederate currency, paid for out of proceeds of cotton made on the plantations in Burke, Columbia, Greene, & Clarke. Deed was made to me. I know these facts because I was a party to the transaction.

9th. I purchased them of B. C. Yancey, on 28th day of Nov., 1863, for the sum of ten thousand dollars in confederate currency, and paid for them out of the proceeds of Burke County property. Deed was made to me. I know these facts because I was a party to the transaction.

No. 10. All of the property derived from the estate of Thos. N. Hamilton, except that which was included in the deed of settlement, was used by me in all my transactions, without any distinction whatever, down to the time of making the deed and afterward; and the proceeds of my wife's property not expended in the support of the family, or invested in the property conveyed by the deed of settlement was, as I have before stated, used by me without any distinction whatever, and doubtless composes, to a considerable extent, the property reserved out of the deed of settlement.

87

Being advised by F. H. Miller, the drawer of the deed, that it would not be good unless I reserved sufficient property to pay all indebtedness, I was more anxious to keep enough property out of the deed to pay all debts, than to keep up any distinction between the property I had made myself and that which we had received from her father's estate.

11th. I have always considered that the chief inducement to make the settlement was, as a matter of pride and principle, to comply honorably with my reiterated promise to my father-in-law, my mother-in-law, my wife, and Dr. Hamilton, the administrator and brother of my wife, to settle this money upon my wife. I had also another strong inducement for making the settlement, which was to place my wife's property, if possible, so it could not be confiscated, if confiscation should ever take place. My purpose was to pay the Loyd and all other debts, and never had any intention of releasing myself thereof, by making the deed of settlement.

88

12th. I had one conversation before my marriage and several afterwards with Thos. N. Hamilton upon the subject of the settlement of his property upon his daughter, the date of which conversation I can not remember, nor am I able to state all that was said in each of these conversations, but the substance of these conversations was, that all the property coming to my wife from his estate should be settled on her for the sole use of her and her children; to which I always expressed my cheerful assent, adding that I would settle it myself if he should not.

No. 13. He settled, as I have before stated, about thirty-five slaves on my wife in his life-time, and gave me the farm in Newton County, worth about ($3,000.00) three thousand dollars; also, some mules, cattle, and hogs with the farm. Farm was deeded to me, slaves to my wife, mules and other stock were given by parol,

89

15th. To me by deed of gift; was not settled as he said at the time, on my wife, because he did not wish us to remain permanently in Newton County; being only temporarily, he was unwilling to tie up the property by settling it. He gave me the farm, therefore, that I might be able to sell it whenever we determined to move away. The deed bore date in 1852, the exact date is not remembered, the place and deed having passed out of our possession more than ten years ago.

No. 16. The reason why I did not pay this debt when able was because I was not urged particularly to do so before I embarked in planting in the State of Arkansas. I expected instead of losing my property in Arkansas, to make money to pay this debt without using the property I had reserved out of the deed of trust. I am not now able to pay this debt because of my pecuniary misfortunes which I have already stated. I have be often to pay it since early in '67, & have not done it, because, as I have before explained, I was not able.

90

M. C. FULTON.

Answered, sworn to, and subscribed before me this March 30th, 1872.

W. T. ONEAL, *Com.* [L. S.]

GEO. P. STOVALL, *Com.* [L. S.]

In the circuit court of the United States, fifth circuit, northern district of Georgia, March term, 1873.

MONTROVILLE C. FULTON, TRUSTEE, complainant, *vs.* SARAH E. LOYD & MINERVA E. LOYD. } In equity.

This cause came before the court at this term upon the bill, answer, replication, and proofs, and after hearing consideration of
91 the same, it is the opinion of the court that the equity of the case is with the complainant.

And it is thereupon adjudged and decreed that the defendants be perpetually enjoined from proceeding against the trust property held by complainant as trustee, and described in the bill, under their execution against the said Montroville C. Fulton, described in the bill; and that the defendants pay the costs of this bill, and that the clerk issue execution therefor, if unpaid.

W. B. WOODS, *Judge.*

APRIL 11TH, 1873.

MONTROVILLE C. FULTON, TRUSTEE FOR HIS wife, Virginia Fulton, &c., *vs.* SARAH E. LOYD, MINERVA E. LOYD. } Bill, &c.

On this the eleventh day of April, 1873, come the defendants
92 in open court by their solicitors, and pray an appeal to the Supreme Court of the United States, from the decree of this court granting an injunction and disposing of the bill in this cause.

DENNIS F. HAMMOND,
BENJAMIN H. HILL,
Def'd's Solicitors.

Notice of this application is acknowledged, April 11th, 1873.

AMOS T. AKERMAN,
Sol'r for Complainant.

The appeal prayed for above is hereby granted in open court, conditioned that the defendants, within three months, enter into the bond in the sum of five hundred dollars, with security to be approved by the clerk.

W. B. WOODS, *Judge.*

APRIL 11TH, 1873.

93 Circuit court of the United States, northern district of Georgia.

M. C. FULTON, TRUSTEE, &C., *vs.* SARAH EMMA LOYD & MINERVA ELLA LOYD. } In equity. Bill for injunction, &c.

Know all men by these presents that we, Sarah Emma Loyd and Minerva Ella Loyd, principals, and M. O. Markham and William Markham, security, are held and firmly bound unto M. C. Fulton, trustee, &c., above named, in the sum of five hundred dollars, for the payment of which we bind ourselves, our heirs, administrators, and assigns, jointly

and severally, firmly by these presents, sealed with our seals and dated this 18th day of April, 1873.

The condition of the above obligation is such that whereas the above-named Sarah Emma Loyd and Minerva Ella Loyd have prosecuted an appeal to the Supreme Court of the United States to reverse a
94 decree rendered on the bill in the above cause:

Now, if the said appellants shall prosecute said appeal to effect and answer all damages and costs if the said appellants fail to make the appeal good, then this obligation to be void; otherwise to remain in full force and effect.

SARAH E. LOYD. [SEAL.]
MINERVA E. LOYD. [SEAL.]
M. O. MARKHAM. [SEAL.]
WM. MARKHAM.

Signed, sealed, and approved this 18th day of April, 1873.

W. B. SMITH, *Clerk.*

95 NORTHERN DISTRICT OF GEORGIA, *ss:*

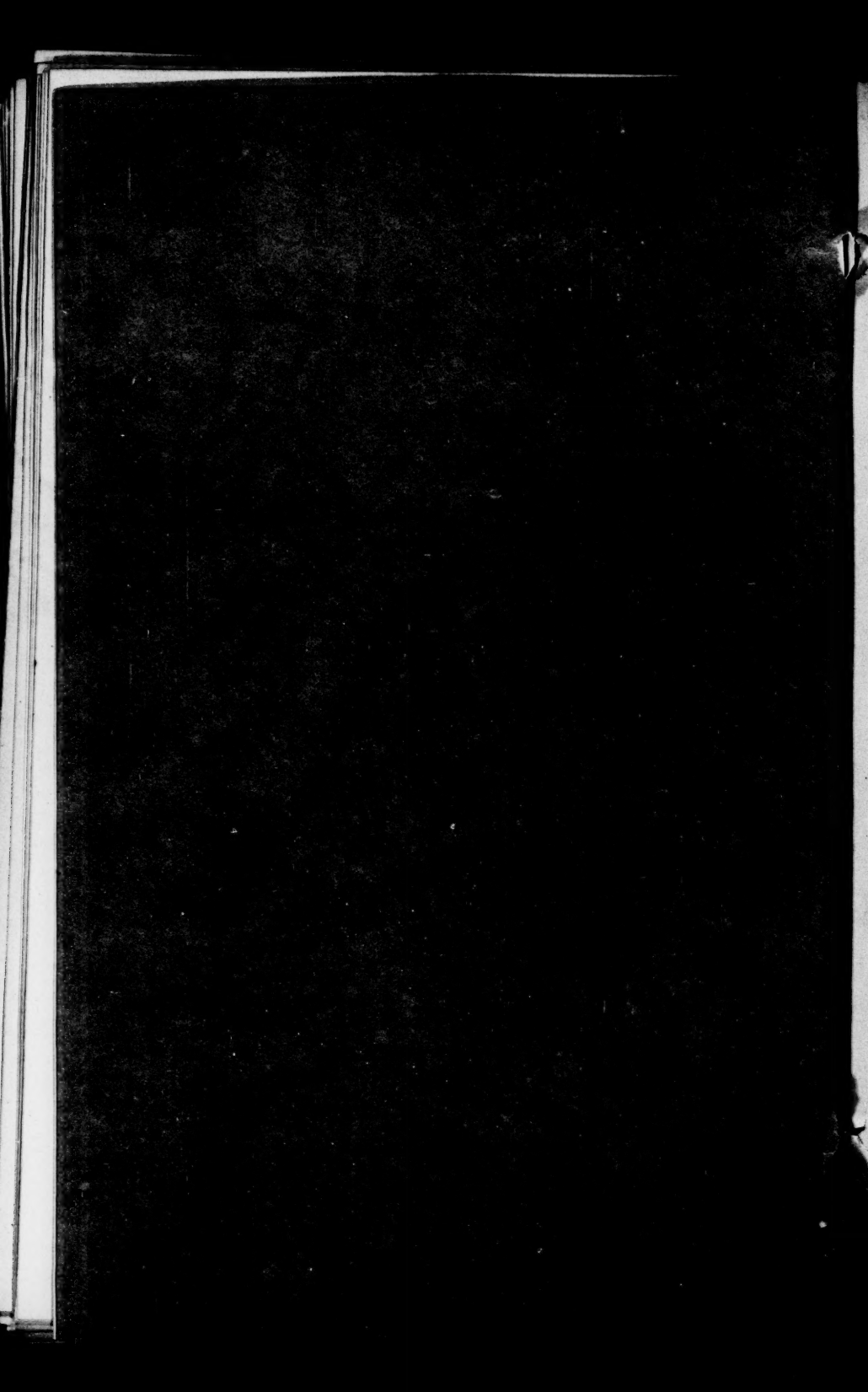
I, W. B. Smith, clerk of the circuit court of the United States for the northern district of Georgia, do hereby certify the foregoing to be a true transcript of the record, and of all the proceedings had in the cause wherein Montroville C. Fulton, as trustee for his wife, Virginia Fulton, was complainant, and Sarah Emma Loyd and Minerva Ella Loyd were defendants, as the same appears from the records of said court now remaining on file in said court, and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Atlanta, in said district, this 27th day of June 1873.

[SEAL.] W. B. SMITH, *Clerk.*

(Indorsed:) In U. S. dist. court, northern dist., Ga. January rules, 1872. M. C. Fulton, trustee &c., vs. S. E. Loyd & M. E. Loyd. Bill, &c. Filed Dec. 1, 1871. W. B. Smith, clerk. John D. Pope, compl'ts sol.

(Indorsement on cover:) No. 335. Sarah E. Loyd and Minerva E Loyd, appellants, vs. Montroville C. Fulton, as trustee for Virginia F. Fulton. N. Georgia, C. C. U. S. Filed 12 November, 1873.



Supreme Court of the United States.

NO. 108.

SARAH E. LOYD, AND MINERVA E. LOYD,

vs.

M. C. FULTON, *Trustee for* VIRGINIA FULTON.

Brief of P. PHILLIPS.

For Appellants.

November 6th, 1875.

R. O. Polkinhorn, Print.

Supreme Court of the United States.

NO. 108.

SARAH E. LOYD, AND MINERVA E. LOYD,

vs.

M. C. FULTON, *Trustee for* VIRGINIA FULTON.

Brief of P. PHILLIPS.

This case presents the following facts:

M. C. Fulton, on the 16th May, 1861, purchased from James Loyd certain premises situated in Atlanta, Georgia, for which he executed on that day his two promissory notes each for $5,000. The said notes were made payable to said Loyd or bearer, one payable on the 1st September next thereafter, the other on the 1st September, 1862.

These notes, before the maturity thereof, were duly transferred and delivered to said Sarah and Minerva, citizens of the State of Virginia.

On the 15th February, 1868, an action was brought on these notes against the maker. On the 15th May, 1871, there was a verdict and judgment for the plaintiff for the sum of $10,000, with interest, $6,447.81, and $30.50 costs. (p. 7.)

Under an execution duly issued the marshal levied on three tracts of land, one known as "Snow Hill," containing 1,781 acres; one tract containing 1,371 acres, purchased by defendant on 9th July, 1860, and one other tract containing 3,000 acres, known as "Artondale;" also on two lots of ground in the town of Athens, Nos. 38 and 39.

On 24th November, 1871, M. C. Fulton filed his bill praying for a perpetual injunction, enjoining the Loyds from enforcing their execution against the property thus described, on the ground that this property had by him been conveyed by deed dated the 14th September, 1864, in trust for his wife, Virginia Fulton.

On the hearing the Chancellor decreed the equity to be in favor of the complainant in the bill, and perpetually enjoined the defendants in the bill from proceeding against this property. (p. 28.)

From this decree an appeal to this Court was prayed for and granted in open court.

ASSIGNMENT OF ERROR.

The appellants now assign for error the decree for the injunction, and aver that the pretended deed of trust was void, as against their debt contracted long before its execution, and that the bill of complaint should have been dismissed.

That the debt is honestly due by Fulton to the complainants, is admitted in the bill. The property for which it was contracted he subsequently sold to one Markham, and received the proceeds therefor. He further admits that he has frequently promised to pay the same, but has failed to do so, owing to his inability.

The equity of the bill is rested upon the allegation, that he had promised his wife's father, previous to his marriage, which took place in 1851, that all the property which he might give after the marriage to his daughter, or which she might inherit after his death, "should be the sole and exclusive property of the said Virginia, free from the debts of any husband she might have." This promise or agreement, rested solely in parol.

It is also averred that the property levied on was purchased with means derived from the wife's father, and at the time of the execution of the deed of trust he was possessed of other property sufficient to pay the debt of the Loyd's.

The evidence in the case rests upon the deposition of the complainant in support of the averments of the bill, and the deposition of his wife's brother, who administered on the estate of his father, to the single point that, at the time of the distribution, Fulton promised to settle the property on his wife. p. 20.

The deed referred to, as the foundation of this bill, is made "in consideration of the natural love and affection which he bears to his wife Virginia, as well as in consideration of the sum of ten dollars."

The ordinary consideration of one dollar or five shillings, or ten dollars, is merely nominal, and though it is sufficient to pass the title under the statute of uses, a deed upon such a consideration is deemed voluntary.

Upon the death of the wife's father a distribution in money took place, and the wife's distributive share was paid over to the husband and receipted for by him.

The money thus received became the absolute property of the husband. There was no legal obligation

resting upon him to make a settlement in favor of the wife, arising out of the receipt of the money or his verbal conversation, either with the father or the administrator.

Where a husband has to apply to a court of equity to obtain possession of property in which the wife derives an interest, then equity will grant the relief, coupled with the condition that an adequate settlement should be made for the wife's benefit.

We insist, therefore, that the deed on its face shows that it is a voluntary conveyance, and there is nothing dehors which entitles it to any other character.

Then the case stands thus:

The voluntary deed is made on the 14 Sept., 1864—and the debt which it seeks to avoid was contracted four years prior to its execution.

This is not the case of a voluntary conveyance of a small portion of property by one possessed of large means, as in the case decided by Marshal C. J., Hopkirk vs. Randolph, in which it is said, "though the fact of the donor being indebted at the time of the voluntary conveyance is a strong badge of fraud, yet, when the donor's fortune was ample, and a gift to his daughter at her marriage was comparatively trivial, though the donor afterwards became insolvent, the gift will not be set aside as fraudulent.

2 Brock., 134.

The gift in this case was a servant maid and a riding-horse, and the donor is described as a man of ample means.

In the case before us the deed conveys the tract known as Snow Hill, containing 1781 acres.

Another tract contains 1371 acres.

Another, known as Artondale, consisting of 3000 acres.

Two lots of grounds in the town of Athens.

Also 115 slaves.

Also all the standing crops on the lands above described, together with the *farming utensils, supplies, stock of every description, household and kitchen furniture at the dwellings on each place, the library and all other miscellaneous articles.*

Also 45 shares of stock in the Augusta factory, and 85 shares of the Princeton factory.

This large property is conveyed to the use of the wife at a time when the grantor was indebted to the present appellants about $14,000, and to other creditors $2,000.

There is no difficulty, it would seem, in determing this case. The well recognized doctrine of this court as stated in the American leading cases commenting on the decision of Sexton vs. Wheaton, is—that the distinction established "between previous and subsequent creditors is universally received; and while, as against the latter, a conveyance is not void unless actually fraudulent, it is admitted to be a general principle in the courts of this country (except New York, where fraud is always a question of fact) that as against creditors existing at the time of the conveyance, a voluntary conveyance is fraudulent in law, and void."

There is some diversity in different States as to the degree of strictness with which this general principle is to be applied.

Thus, in South Carolina, a voluntary conveyance was upheld against an existing creditor, where the indebtedness was utterly inconsiderable, as compared with the donor's property, such as that which is contracted for the current expenses of the family.

No case has come within examination which approaches the circumstances of this, and in which the deed has been upheld against an existing creditor.

It will be noted that the conveyance strips the grantor not only of property of very great value, but even of those small possessions which the humanity of the law usually exempts from execution; it includes farming utensils, supplies, household and kitchen furniture, the library, and all other miscellaneous articles.

Admitting the question of fraudulent intent to be, under the decisions in Georgia, as it is in New York, a question of fact and not of law, still, as to a prior creditor, the deed is everywhere held to be *prima facie* fraudulent.

Howard vs. Snelling, 32 Geo., 206.

Is there anything in this case to rebut this *prima facie* presumption?

We maintain that all the circumstances tend strongly to the conclusion that the ~~interest~~ was to delay and hinder the creditor.

We are not called upon to offer direct proof of this fraudulent intent. "Men do not often declare their purpose when they are about to do an act injurious to others, and we have no means of arriving at a knowledge of the internal resolve or determination of the actor, but by reasoning or drawing inferences from his external conduct."

At the date of the execution of this deed General Sherman was in possession of the heart of Georgia. There were apprehensions of confiscation. In the amended bill it is stated that the deed was made because he had promised to make it, and to protect the property of said Virginia from confiscation for his participation in the rebellion. (p. 14.)

Now, it is shown that the property conveyed was never the property of said Virginia, but was property purchased by him. It is not even shown that the money with which the purchases were made was derived from the wife's father, for on this subject he testifies, in answer to cross-interrogatory: Did you not buy and sell and invest the money derived from Thos. N. Hamilton's property as your own without making any distinction whatever down to the time of making the deed of gift?

Ans. All of the property derived from said estate, except that included in the deed of settlement, was used by me in all my transactions, without any distinction whatever, down to the time of making the deed and afterwards; and the proceeds of my wife's property, not expended in the support of the family, or invested in the property conveyed by the deed of settlement, was, as I have before stated, used by me without any distinction whatever, and doubtless composes, to a considerable extent, the property reserved out of the deed of settlement. (p. 27.)

It has already been stated that this pretended promise to settle all the property he might receive from the father of his wife, rested in parol alone.

Now, during the life of the father and about two years after the marriage, which took place in 1851, he made two conveyances, one to his son-in-law, the complainant, of a plantation, and one to the daughter for her sole and exclusive use for thirty-five slaves.

Hamilton, the father, died in 1859.

The promise is said to have been made before marriage as well as after, so that the deed in pursuance of this promise is executed more than fourteen years after the promise, and more than four years after the death of the father and taking possession of the distributive share of the estate.

provisions

Again, it is certainly worthy of remark, that this promise makes no figure in the ~~pursuance~~ of the instrument. It is not stated as forming any part of the consideration. There is no recital that the property conveyed had been purchased for the wife's benefit or with her means. It stands as a naked voluntary conveyance for and in consideration of natural love and affection which he bears toward his wife.

The attempt now made to interpolate another and wholly different consideration has no justification in the principles of law, and receives no support from the circumstances of the case.

If the arms of General Sherman had pricked his memory and stirred him into action, how can we account for the omission of a statement in the deed, so material on a question of confiscation for his aid in the rebellion?

But a minute examination of the deed shows that his individual interests in this property were by no means lost sight of.

The deed, as we have said, was executed on 14th September, 1864, and was made in favor of James S. Hamilton, brother of his wife, as trustee.

It is very carefully provided that in case of the resignation of the trustee the wife may appoint the grantor himself to act as trustee.

Then, in order to secure full dominion, the grantor further provides that in case he should become trustee he was to have the right "at any time to sell, mortgage, lease, exchange, or otherwise dispose of, at his discretion, all or any of this property, reinvesting the proceeds in such property as may be deemed best by him." Further, he is authorized, for the purpose of supporting the wife and children, "to encroach upon the corpus of the estate without authority from any court."

Further, it is provided that the receipt of the wife

shall be a sufficient and legal discharge for the yearly income or any portion of the corpus, and that he is not to be required to make return to the court of ordinary, or any other court.

Further, it is provided, that in case of the death of the wife intestate leaving children, the trustee was authorized to keep the estate intact with the powers heretofore granted until he *believes it advisable* to distribute the same.

This provision, that the grantor himself might become trustee, was well understood by the parties as the means by which he was to retain full dominion while pretending to part with it. Accordingly we find, that on the day of its execution and in presence of the same four witnesses thereto, Hamilton, the trustee, resigns, the wife appoints the husband in his stead, and his formal acceptance of the trust is made. (p. 12.)

It is in the presence of such facts as these that the court is asked to go into a nice calculation of amounts to ascertain whether the debtor, at the time of executing this deed, reserved to himself what was sufficient at that time to pay his debts?

And how does this account stand on the complainant's own showing? He admits that, besides this debt which, with interest, amounted to about $14,000, he owed to others $2,000.

His statement as to property reserved is one-fifth interest in some iron works.....	$10,000
Half interest in a house and lot,.....	2,000
City bonds, Augusta,.....	5,000
Railroad bonds,.....	2,000
State bonds,.....	5,000
Four slaves, ...	5,000
Half interest in the celebrated horse "Idol,"	2,500
Cotton and tobacco,.....	5,000
And all other property worth in Confederate currency,.....	20,000

All of this reserved property, with the exception of the half interest in a house and lot, is of a character which Dickens, in one of his facetious characters, describes as "portable." It has no fixed locality. It is to-day in the pocket of the owner, and to-morrow it takes wing and is not to be found.

Is such a reservation any security for an indebtedness of $16,000?

The case of Parish vs. Murpheree is very analogous to this, and it was the unanimous opinion of the court "that the conveyance under such circumstances would be void against creditors at Common Law."

13 How., 93.

P. PHILLIPS,
for Appellant.

No. 118.

SUPREME COURT, UNITED STATES,

October Term, 1875.

SARAH E. LOYD, et al. Appellants,

vs.

M. C. FULTON, Trustee, Appellee.

BRIEF OF JOHN D. POPE,

Attorney for Appellee.

STATEMENT OF FACTS.

This is a bill filed to enjoin a common law execution, on the ground that the property levied on is held by the defendant in execution only as trustee for his wife and children. The trust-deed under which the property is held was executed September 14th, 1864, and afterwards the grantor was substituted as trustee. The judgment on which the execution issued was rendered May 15th, 1871; the commencement of the suit was March, 1868; and the notes sued on—two of $5,000 principal each—were dated May 16th, 1861, and due respectively September 1st, 1861, and September 1st, 1862. On September 14th, 1864, when the trust-deed was made, these notes amounted, principal and interest, to $11,780, and all other existing debts of Fulton, the grantor, did not exceed $2,000; so that all his debts were not at that time more than $13,780. He reserved out of the deed property, exclusive of slaves, worth more than $30,000 in United States currency, of a kind not liable to injury from the war and readily convertible into cash, while at the same time it was within easy reach of legal process. The property conveyed, exclusive of slaves, was of less value than the property reserved. The deed was made under the advice of counsel, who warned the grantor that he must reserve ample means to pay all existing debts, and the grantor was careful to reserve more than twice as much as he owed. The beneficiaries in the deed were the wife and children of the grantor, and the property conveyed, as well as that reserved, had either been given to the wife by her father in his life time, or descended to her as his heir at law.

The deed was not made with intent to hinder, delay or defraud creditors, but was made in accordance with an understanding long before had between grantor and his father-in-law, his brother-in-law and his wife, which was to the effect that all property received from his father in-law's estate should be held for the sole and separate use of his wife. Her father had given her considerable property during his life-time, and with the exception of a single item, had given it all to the wife—the exception being a house and lot designed for a temporary residence, which was put in the husband's name expressly for the reason that it was soon to be sold and it was not desirable to "tie it up" with a trust-deed. In 1859 the father in law died, and as he left no will, the husband promised the representative of the estate, as well as his wife, to make the deed in question to effectuate the wishes of all parties concerned; and though there was delay, from mere neglect, the intention to make it was never abandoned, but finally, in 1864, was carried into execution. The deed was placed on record and all the world notified, yet the Loyds made no effort to collect their debt out of the property reserved, but waited until it was lost in unsuccessful planting in Arkansas in 1866 and 1867. The trust-deed served to protect the reserved property from the losses in Arkansas, but after this the Loyds sought to nullify it, in order that they might avail themselves of the good it had done. The Loyd debt is well secured by a vender's lien on the property for which it was created, but the holders preferred to collect it out of the trust property, and hence the levy was made. The Court below enjoined the execution from proceeding against the trust estate, and the case is here on appeal from that decision.

POINTS AND AUTHORITIES.

I.

The doctrine of Lord Hardwicke, in Townsend v. Windham, 2 Vesey, 10, and of Chancellor Kent, in Reade v. Livingston, 3 J. Ch., 481, to the effect that a voluntary conveyance founded on a meritorious consideration is, *per se*, void as against existing creditors, is not law either in England or America. It has been denied in England in Lush v. Wilkinson, 5 Vesey, 384; in Townsend v. Westocott, 2 Beavan, 340–345; in Cadogan v. Kennett, Cowper, 434; in Gale v. Williamson, 8 M. & W., 410; in Shares v. Rogers, 3 B. & A. 96; and in Freeman v. Pope, 5 Ch. App. Cases Eq., 538.

It has been denied in nearly every State of the American Union in cases too numerous to be cited. Howe v. Ward, 4 Me., 195; Seward v. Jackson, 8 Cow., 423; Babcock v. Eckler, 24 N. Y., 623; Moritz v. Hoffman, 35 Ill., 553; Gridley v. Watson, 53 Ill., 193; Lerow v. Wilmarth, 9 Allen, 382; Winchester v. Charter, 12 Allen, 606; Weed v. Davis, 25 Ga., 684; Miller v. Wilson, 15 Ohio, 108; Jones v. Young, 1 Dev. & Battle, 352; Arnett v. Wanett, 6 Iredell, 41; Young v. White, 25 Miss., 146; Wilson v. Kohlheim, 46 Miss., 346; Taylor v. Eubank, 3 Marshall, 239; Hamilton v. Greenwood, 1 Bay. S. C., 173; Salmon v. Bennett, 1 Conn., 525; Lane v. Kingberry, 11 Mo., 409; Burkey v. Self, 4 Sneed, 121; Chambers v. Spencer, 5 Watts, 404; Posten v. Posten, 5 Wharton, 27; Worthington v. Shipley, 5 Gill, 449; Dodd v. McGraw, 3 Eng. Ark., 93; Smith v. Yell, Ib., 470; Cutter v. Griswold, Walker's

Ch., (Mich.) 438; Townsend v. Maynard, 45 Pa. St., 198; Hinde's Lessee v. Longworth, 11 Wh., 212; Sedgwick v. Place, 12 Blatchford, 168; Kehr v. Smith, 20 Wallace, 35. And Chancellor Kent himself yields the doctrine in *Note a*, side page 442, top page, 572, Vol. 2, Com. 11th edition.

II.

Fraud or no fraud, under Stat. 13 Eliz., c. 5, is *a question of fact.* The indebtment of the grantor at the time of making the deed is mere evidence, which is to be weighed in connection with other evidence and may be overcome by it.

Seward v. Jackson, 8 Cow., 435, 451–3–4; Taylor v. Eubank, 3 Marshall, 239; Weed v. Davis, 25 Ga., 686; Sedgwick v. Place, 12 Blatchford, 168; Langley v. Perry, 2 Am. L. Times B'k'cy Rep. 84; Townsend v. Maynard, 45 Pa. St., 198; Lane v. Kingberry, 11 Mo., 409; Howard v. Williams, 1 Bailey's S. C. R., 575; Babcock v. Eckler, 24 N. Y., 631; 1 Smith's L. C. 7th Am. Ed., 41; Hinde's Lessee v. Longworth, 11 Wh., 213; Adams' Eq., s. p., 147; 1 Story's Eq., sec. 365; Winchester v. Charter, 12 Allen, 606; Page v. Kendrick, 10 Mich., 300; Jackson v. Dean, 1 Douglas, Mich., 519; Smith v. Neil, 1 Hawks, 341; Howe v. Ward, 4 Me., 208; Moritz v. Hoffman, 35 Ill., 555.

III.

The true question under Stat. 13 Eliz., c. 5 (in the absence of actual fraudulent intent) is, *was there sufficient property left after the settlement or conveyance to pay all existing debts?* See same cases, and especially Winchester v. Charter, 12 Allen, 606; Arnett v. Wanett, 6 Iredell, 41; Moritz v. Hoffman, 35 Ill., 553; Pomeroy v. Bailey, 43 N. H., 118; Leavitt v. Leavitt, 47 N. H., 329; Lush v. Wilkinson, 5 Vesey, 384; Gale v. Williamson, 8 M. &. W., 405; Shares v. Rogers, 3 B. & A., 96; Sedgwick v. Place, 12 Blatchford, 168; Kehr v. Smith, 20 Wallace, 35; 1 Bishop on Married Women, sec. 742.

IV.

But, whether the foregoing propositions be true or not, the Code of Georgia, in which State the property conveyed is situate, settles the case in favor of complainant. Section 1954 of the Code in force September 14, 1864, reads as follows:

"*Acts Void against Creditors.*—The following acts by debtors shall be fraudulent in law against creditors, and as to them null and void, viz.:

1. Every assignment or transfer by a debtor, insolvent at the time, of real or personal property of any description to any person, either in trust or for the benefit of himself or any one or more of his creditors, or any person appointed by him, to the exclusion of any other creditor in the equal participation of such property, *unless* such assignment or transfer is a *bona fide* sale, in extinction, in whole or in part, of the debt of the purchaser, and without any trust or benefit reserved to the seller or any person appointed by him.

2. Every conveyance of real or personal estate by writing or otherwise, and every bond, suit, judgment and execution, or contract of any description, had or made with intention to delay or defraud creditors, and such intention known to the party taking; a *bona fide* transaction on a valuable consideration, without notice or ground for reasonable suspicion, shall be valid.

3. Every voluntary deed or conveyance, not for a valuable consideration, made by a debtor insolvent at the time of such conveyance."

V.

The case for complainant is greatly strengthened by the fact that all the property, including what was reserved to pay existing debts, was either given to or inherited by Mrs.

Fulton; and by the further fact that it was agreed both before and after the marriage that the property should all be held for her sole and separate use. Though this agreement, if not executed on the part of Fulton; could not be enforced because not reduced to writing, still, when he has made the deed vesting the legal title for the use of Mrs. Fulton, the deed will be good even if Fulton shall prove to have been insolvent at the time of its execution; because the equity of Mrs. Fulton is equal to that of any general creditor, and where equities are equal, the legal title must prevail.

Hall v. Light, Barrett & Co., 2 Duvall's Ky. R., 358; Embry & Young v. Robinson and Wife, 7 Hump., 444.

John D. Rohr
Atty for Appellee